

REMARKS

This Office Action is subsequent to the previous office action dated July 2, 2003. Claims 1-89 are pending in the application. Claims 1-89 are rejected by the Office Action. The Applicant filed a preliminary amendment on June 22, 2003 to add claims 19-89. Also, the Applicant filed a preliminary amendment on October 31, 2002 to amend the title to "A Stimulation Enabled Retail Management Tutorial System."

Typographical Errors

The Applicant has amended claim 10 to refer to elements (a)-(e) rather than to (e)-(h) and (a).

Claims Rejections – 35 USC §101

Claims 1-89 are rejected by the Office Action under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Regarding claims 1-9, 19-27, 36-44, 54-62, and 72-80, the Office Action alleges that the claims "are not claimed to be practiced to be practiced on a computer, therefore, it is clear that the claims are not limited to the practice in the technical arts. On that basis alone, they are clearly non-statutory." The Applicant has amended claims 1-9, 19-27, 36-44, 54-62, and 72-80 to be directed to a computer-readable medium having computer-executable instructions for performing steps. Thus, claims 1-9, 19-27, 36-44, 54-62, and 72-80, as amended, are claimed to be practiced on a computer.

The Office Action also alleges that claims 1-89 "take several abstract ideas (i.e., 'indicia representative of a store goal' in the abstract) and manipulate them together adding nothing to the basic equation." The Applicant has amended claims 1, 10, 19, 28, 36, 45, 54, 63, 72, and 81 to clarify the claimed invention. Claim 1 has been amended to include the feature of "receiving an indicia representative of a store goal, **the indicia identifying training that is associated with the store goal**". (Emphasis added.) For example, the specification, as originally filed, discloses (Page 1, line 41 to page 2, line 3.):

A store management tutorial system is enabled for providing active coaching on aspects of inventory management, stocking, advertising, return on revenue, markdown, assortment strategy and other aspects of retail management. Techniques

for process sensitive help are also integrated into the system to provide contextual examples to guide a user in performing a task.

As amended, the claim limitations of claim 1 are useful, concrete, and tangible. Similarly, claim 10 has been amended to include the feature of “logic that receives indicia representative of a store goal, the indicia identifying training that is associated with the store goal”. Claim 19 has been amended to include the feature of “receiving information indicative of a goal, the information identifying training that is associated with the goal”. Claim 28 has been amended to include the feature of “logic that receives information indicative of a goal, the information identifying training that is associated with the goal”. Claim 36 has been amended to include the feature of “presenting information indicative of a goal, the information identifying training that is associated with the goal”. Claim 45 has been amended to include the feature of “logic that presents information indicative of a goal, the information identifying training that is associated with the goal”. Claim 54 has been amended to include the feature of “presenting information indicative of a goal, the information identifying training that is associated with the goal”. Claim 63 has been amended to include the feature of “logic that presents information indicative of a goal, the information identifying training that is associated with the goal”. Claim 72 has been amended to include the feature of “receiving indicia representative of a goal, the indicia identifying training that is associated with the store goal”. Claim 81 has been amended to include the feature of “logic that integrates examples into the presentation to provide assistance with achieving the goal, the examples providing training that is associated with the goal”. The remaining claims depend from independent claims 1, 10, 19, 28, 36, 45, 54, 63, 72, and 81, and thus include features that are useful, concrete, and tangible. Because claims 1-89 include features that are practical, the Applicant requests reconsideration of claims 1-89.

Claims 1-89 are rejected by the Office Action under 35 U.S.C. 112, first paragraph because “current case law require a rejection if a 101 rejection is given”. Because of the claim amendments, as discussed above, the Applicant requests reconsideration of claims 1-89.

Claims 1-4, 9, 10, 12, 13, 18-26, 28-33, 36-38, 40-47, 49-58, 61, 63-67, 70, 72-76, 79-85, and 88-89 are rejected by the Office Action under 35 USC §101 as claiming the same invention as that of claims 1-19 of prior U.S. Patent No. 6,003,021 (Zadik), i.e., a double patenting rejection.

On page 3, the Office Action alleges that claim 1 is “anticipated by” claim 1 and a section of the specification in Zadik. The MPEP describes the proper standard for determining whether a double patenting rejection is proper. In particular, section 804 indicates that:

In determining whether a statutory basis for a double patenting rejection exists, the question to be asked is: Is the same invention being claimed twice? 35 USC §101 prevents two patents from issuing on the same invention. “Same invention” means identical subject matter.

The Applicant respectfully submits that whether or not any of the present claims is “anticipated” by Zadik is not relevant to whether or not a rejection under 35 USC §101 is proper. Moreover, as stated in MPEP §804, in reference to determining statutory double patenting (February 2003 Revision, page 800-20. Emphasis added.):

A reliable test for double patenting under 35 USC §101 is whether **a claim in the application** could be literally infringed without literally infringing a **corresponding claim in a patent**. *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970). Is there an embodiment of the invention that falls within the scope of one claim, but not the other? If there is such an embodiment, **then identical subject matter is not defined by both claims and statutory double patenting would not exist**. For example, the invention defined by a claim reciting a compound having a “halogen” substitute is not identical to or substantively the same as a claim reciting the same compound except having a “chlorine” substitute in place of the halogen because “halogen” is broader than chlorine.”

In the example provided in the MPEP and recited above, clearly a “halogen” would be anticipated by “chlorine.” However, they are not **identical**, so a rejection under 35 USC §101 would not be proper.

Referring to claim 1, the Office Action improperly combined claim 1 of Zadik with the specification (column 13, line 52-56) of Zadik in its argument of double patenting and used the improper “anticipation” standard. The Applicant respectfully submits that when the present claim 1 is compared to only the claims of Zadik, it is clear that claim 1 is not claiming the identical subject matter of any of the claims in Zadik. The Applicant accordingly respectfully submits that the rejection of claim 1 under 35 USC §101 is improper and should be withdrawn. The rejections of claims 10, 19, 28, 36, 45, 54, 63, 72, and 81 are improper for similar reasons. Claims 2-4, 9, 12, 13, 18, 20-26, 29-33, 37-38, 40-44, 46-47, 49-53, 55-58, 61, 64-67, 70, 73-76,

79-80, 82-85, and 88-89 depend from independent claims 1, 10, 19, 28, 36, 45, 54, 63, 72, and 81 and thus include the same elements as the corresponding independent claims and do not claim the same invention as claimed in Zadik. Moreover, referring to dependent claims 20, 21, 22, 24, 25, 26, 30, 32, 33, 40, 41, 42, 43, 44, 50, 51, 52, 53, 55, 57, 58, 64, 66, 67, 73, 74, 75, 80, 82, 83, 84, and 89, the Office Action cites only material in the specification, abstract or drawings of Zadik and does not show corresponding claims in Zadik that claim the same invention as these dependent claims. Thus, the Applicant requests reconsideration of claims 1-4, 9, 10, 12, 13, 18-26, 28-33, 36-38, 40-47, 49-58, 61, 63-67, 70, 72-76, 79-85, and 88-89.

CONCLUSIONS

All objections and rejections have been addressed. Hence, it is respectfully submitted that the present application is in condition for allowance, and a notice to that effect is earnestly solicited.

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